



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 2000-1-9

Issued by the Department of Transportation
on the 7 th day of January , 2000

SERVED: January 7, 2000

**U.S.-Russia Third-Country Code Sharing
Opportunities**

Docket OST-99-5286 - 69

**Joint Application of American Airlines, Inc. and
Finnair Oyj for a Statement of Authorization to
Code Share**

Undocketed

ORDER

SUMMARY

By this order we authorize Continental Airlines and American Airlines to operate third country code-share services in the U.S.-Russia market, effective January 22, 2000, with their code-share partners, Czech Airlines (**CSA**), and **Finnair Oyj**, respectively. In addition, we allocate each carrier seven weekly **frequencies** for these services. We also authorize Delta Air Lines to operate its existing third country code-share authorization with either **Swissair** or Air France.

BACKGROUND

On April 5, 1999, the United States and the Russian Federation signed a Protocol with a set of Annexes that provide a new framework governing air services in the U.S.-Russia market. Under the terms of the new agreement, U.S. carriers may operate up to a total of five third country code-sharing arrangements, of which three may be operated as of January 22, 1999, and the remaining two as of January 22, 2000 (Annex V, Cooperative Marketing Arrangements).

For each third country code-sharing arrangement, the U.S.-Russia agreement provides that no more than one intermediate point may be served. In addition, no more than 14 weekly flights can be operated by each third country code-sharing arrangement with no more than a daily service being provided in the same city-pair market. In addition, third country code-share services require an allocation of frequencies and must be operated within the overall level of frequencies available for services in the U.S.-Russia market.¹ Annex I (Scheduled Air Services) of the U.S.-Russia agreement provides that U.S. carriers may operate up to 56 round-trip U.S.-Russia combination frequencies per week until June 30, 2000.² Currently, 31 frequencies have been allocated to U.S. carriers, leaving 25 available for allocation.

Delta Air Lines and its partner Swissair, Northwest Airlines and its partner KLM, and United Air Lines and its partner Lufthansa, have been authorized to use the three U.S.-third country code-sharing arrangements that may be operated as of January 22, 1999. By Notice dated March 16, 1999, we requested applications from all U.S. carriers interested in making use of the two new service opportunities.

APPLICATIONS

Three U.S. carriers applied for the two third country code-sharing authorizations that become available on January 22, 2000, as follows:

- American with **Finnair** via Helsinki, Finland;
- Continental with Air France via Paris, **France**;³ and
- Delta with Air France via Paris, France.

Each U.S. carrier would place its code on its foreign partner's flights to Moscow and St. Petersburg, Russia, and **each has** requested allocation of seven weekly **frequencies** for these services. Under the provisions of the U.S.-Russia agreement, this would enable each partnership to operate a total of 14 weekly code-share flights -- seven per week each to Moscow and St. **Petersburg**.⁴

Each applicant filed an answer and reply to the other applications in support of its own application. The City of Houston and the Greater Houston Partnership ("Houston Civic Parties") filed a reply in support of Continental's application; American and Delta filed additional responses to the replies?

¹Code-share services count as one half of a frequency for a U.S. carrier placing its code on flights in the U.S.-Russia market operated by another airline.

²These frequencies increase to 63 per week from July 1, 2000, through January 22, 2001.

³**Continental** subsequently amended its application to operate the service with **CSA**. See Subsequent Developments section below.

⁴As noted previously, the U.S.-Russia agreement provides that code-share flights count as one-half of a frequency for a U.S. carrier placing its code on flights operated by another airline.

⁵**Motions** for leave to file otherwise unauthorized documents accompanied the responses to the replies filed by American and **Delta** and the reply filed by the Houston Civic Parties. In the interest of a complete record, we will grant the motions.

SUBSEQUENT DEVELOPMENTS

Subsequent to the filing of the applications, Delta announced that it would be terminating its alliance relationship with **Swissair** and it would concentrate on its alliance operations with Air France. In response to Delta's announcement, Continental filed motions on August 19, 1999, and October 26, 1999, seeking to substitute **CSA** as its code-share partner for its proposed Russia service and urging the Department to authorize Delta to exercise its existing third country code-share authorization with either **Swissair** or Air France and to authorize Continental and American to use the two new third country code-share opportunities made available under the new U.S.-Russia agreement. Continental states that given the changes in Delta's code-share arrangements, Delta would be able to conduct its proposed code-share services with Air France under its existing third country code-share designation and frequency allocation. In these circumstances, Continental argues that the new designations would be available for the other two airline applicants -- Continental and American, with **CSA** and **Finnair**, respectively. Delta filed an answer, stating that it did not object to Continental's proposal. American and **Finnair** filed a joint answer in support.⁶

DECISION

We have decided to authorize American with its partner, **Finnair**, and Continental with its partner, **CSA**, to use the two opportunities available in January 2000 for third country code-share services in the U.S.-Russia market. We will also allocate to American and Continental seven weekly frequencies each for their proposed code-share services. In addition, we will authorize Delta to exercise its existing third country code-share authorization with either **Swissair** or Air France.

When we initially began this proceeding, three carriers had applied for the two available third country code-share service opportunities, requiring the Department to select among the applicants. Based on the current record of the case, only two applicants, Continental and American, are now seeking to use these opportunities. Thus, comparative selection among the applicants is no longer necessary.

Upon review of the applications of Continental and American, we find that award of the requested third country code-share opportunities to these carriers is in the public interest. Both Continental and American are new entrants to the U.S.-Russia market and their proposed code-share services would increase the price and service options available to travelers in the U.S.-Russia market. Furthermore, authorization of these services would use valuable opportunities available under the new agreement with Russia and would promote competition in the market. Moreover, we note that the code-share services proposed are consistent with the aviation agreements between the United States and the homelands of each carrier's code-share partner, *i.e.* the Czech Republic and Finland. Therefore, we will grant the carriers' applications for the necessary regulatory authorizations to operate these services.⁷ Consistent with our customary practice, the frequency allocations granted

⁶While several other responsive pleadings and motions for leave to file were filed to submissions in this case, those pleadings have been superseded by those discussed above and need not be addressed. In the interest of a complete record we will grant all motions for leave to file otherwise unauthorized documents.

⁷On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we find American and Continental are qualified to provide the services authorized by this order.

in conjunction with these authorized services will be subject to our standard 90-day dormancy condition.

With respect to Delta, we will dismiss that carrier's request to use one of the two new code-share authorizations since Delta is no longer pursuing that authorization. Delta currently holds authority to serve Russia on a code-share basis using one of the third country code-share opportunities that is already available and a frequency allocation for such services operated in conjunction with Swissair. Given Delta's evolving code-share arrangements as set forth in this case, we will authorize Delta to use its existing code-share authorization with either **Swissair** or Air France, thereby facilitating Delta's planned transition of services under its code-share arrangements with these **carriers**.⁸

ACCORDINGLY,

1. We authorize Continental Airlines, Inc., and American Airlines, Inc., to operate third country code-share services in the U.S.-Russia market with Czech Airlines and **Finnair Oyj**, respectively, effective January **22, 2000**;
2. We allocate seven weekly scheduled combination service frequencies each to Continental Airlines, Inc., and American Airlines, Inc., to operate the third country code-share services authorized in paragraph 1, above, in the U.S.-Russia market effective January **22, 2000**;
3. The frequency allocations in paragraph 2 are subject the condition that they will expire automatically and the frequencies will revert to the Department if they are not used for a period of 90 days. This **90-day** dormancy period will begin on January **22, 2000**;
4. We grant the application of Continental Airlines, Inc. for an exemption under **49 U.S.C. §40109** to provide scheduled foreign air transportation of persons, property, and mail between Newark, New Jersey, on the one hand, and Moscow and St. Petersburg, **Russia**, on the other **hand**;⁹
5. We grant the application of American Airlines, Inc. for an exemption under **49 U.S.C. §40109** to provide scheduled foreign air transportation of persons, property, and mail between points in the United States, on the one hand, and Moscow and St. Petersburg, Russia, on the other **hand**.¹⁰

⁸Delta and Air France already hold the necessary economic authorizations to operate these services. Delta holds an exemption to provide service between any point in the United States and any point in France and beyond (See Order 98-6-5 confirming Notice of Action Taken dated May **8, 1998**, in Docket **OST-98-3740**); a certificate for Route **616** authorizing service to Moscow and St. Petersburg, Russia; and broad route integration authority (Order **97-7-16**). Delta and Air France have been granted a blanket statement of authorization for their code-share services. Under that authorization, the carriers must provide **30-day** notice to the Department of their intent to provide code-share services in new markets. Delta provided such notice in its application in this Docket.

⁹Continental's exemption application in Docket **OST-99-5049** was consolidated into this proceeding by Notice dated March **16, 1999**.

¹⁰American currently holds an exemption to serve between Chicago, Illinois+ and Moscow, Russia. American applied to replace Chicago-Moscow with an authorization for service between all points in the U.S. and Moscow in Docket **OST-98-4328**. American also requested exemption authority to serve the U.S.-St. Petersburg market in Docket **OST-98-4522**. Those applications were consolidated into this Docket by Notice dated March **16, 1999**.

6. The exemption authorities granted by this order are effective immediately for services commencing January 22, 2000, and will remain in effect for a period of two years from the service date of this order;

7. Except to the extent exempted or waived, the exemption authorities granted by this order are subject to the terms, conditions, and limitations of each holder's certificate of public convenience and necessity and the standard exemption conditions attached to this order as Appendix A;

8. We grant the application of Czech Airlines (CSA) for a Statement of Authorization under Part 212 of the Department's regulations to display ~~the~~ code of Continental Airlines, Inc. on **flights** operated by **CSA** between Prague, Czech Republic, on the one hand, and Moscow and St. Petersburg, Russia, on the other **hand**;¹¹

9. We grant the joint application of American Airlines, Inc., and **Finnair Oyj (Undocketed)** for a Statement of Authorization under Part 212 of the Department's regulations to display the code of American Airlines, Inc. on flights operated by **Finnair Oyj** between Helsinki, Finland, and Moscow and St. Petersburg, **Russia**;¹²

10. The Statements of Authorization granted by this order are effective immediately for services commencing January 22, 2000, and will remain in effect indefinitely subject to the following terms, conditions, and limitations: (a) The statements of authorization will remain in effect only as long as (i) American Airlines, **Inc./Finnair Oyj** and Continental Airlines, Inc./Czech Airlines continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect; (b) American Airlines, **Inc./Finnair Oyj** and Continental Airlines, Inc./Czech Airlines must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.¹³ (Such notice should be filed in this Docket: **OST-99-5286**); (c) The code-sharing operations conducted under this authority must comply with Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (i.e. the carrier shown on the ticket) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier **shall** not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal

¹¹*Continental and **CSA** already **hold** a Statement of Authorization to code-share between Newark and Prague.

¹²On December 22, 1998, the Department granted a joint application of American and **Finnair (Undocketed)** for a Statement of Authorization to conduct reciprocal code-share services between New York (**JFK**) and Helsinki as well as **various** other points in the United States and Europe, and deferred action on the carriers' application to serve St. Petersburg, Russia. American and **Finnair** subsequently amended that application to include code-share services between Helsinki and Moscow.

¹³We expect this notification to be received within ten (10) days after such non-effectiveness or of such decision.

Aviation Administration has issued a flight prohibition; and (d) The authority granted here is specifically conditioned so that neither American Airlines, Inc./Finnair Oyj nor Continental, Airlines, Inc./Czech Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions;

11. We authorize Delta Air Lines, Inc., to operate third country code-share services in the U.S.-Russia market with either Air France or Swissair;
12. We dismiss the application of Delta Air Lines, Inc., for seven weekly scheduled combination service frequencies and a designation to operate third country code-share services in the U.S.-Russia market effective January 22, 2000;
13. We grant the motions of Continental to reopen the record;
14. We grant all motions for leave to file otherwise unauthorized documents;
15. To the extent not granted or dismissed, we deny all requests in the referenced Docket;
16. We may amend, modify, or revoke the authority granted in this order at any time without hearing at our discretion; and
17. We will serve a copy of this order on Continental Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Czech Airlines; **Finnair Oyj**; Air France; the U.S. Department of State (Office of Aviation Negotiations); the Ambassador of the Russian Federation in Washington, D.C.; and the Federal Aviation Administration.

By:

A. BRADLEY MIMS

Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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APPENDIX A**U.S. CARRIER**
Standard Exemption Conditions

In the conduct of operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.